

No. 11989

United States
Court of Appeals

for the Ninth Circuit

JAMES A. NOELL and AMELIA E. NOELL,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

JUN 3 - 1949

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

A. BRIGHAM ROSE,

408 S. Spring St.,

Los Angeles 13, Calif.

For Appellee:

JAMES M. CARTER,

United States Attorney.

NORMAN W. NEUKOM,

Assistant U. S. Attorney,

ERNEST J. ZACK,

Assistant U. S. Attorney,

600 U.S. Post Office and Court House Bldg.,

Los Angeles 12, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California,
Central Division

No. 19811

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES A. NOELL and AMELIA E. NOELL,
Defendants.

INDICTMENT

[11 U. S. C. 52 (b) (1) and (2) Concealing Assets
in bankruptcy; False oath in bankruptcy.]

The Grand Jury charges:

Count One

(11 U. S. C. 52 (b) (1))

On or about May 22, 1946 a voluntary petition in bankruptcy was filed in the United States District Court for the Southern District of California, Central Division, by James A. Noell and Amelia E. Noell, defendants herein, as individuals and jointly as partners doing business as Pacific Firm-Bilt; and on May 22, 1946 said defendants and the partnership Pacific Firm-Bilt were duly adjudged bankrupt by said court and said proceedings in bankruptcy were referred generally to Benno M. Brink, referee in bankruptcy, and on December 23, 1946 were transferred and re-referred to Hubert F. Laugharn, referee in bankruptcy, for further proceedings as required by law; and said Benno

M. Brink and Hubert F. Laugharn were duly appointed, qualified, and acting referees in bankruptcy of said court:

On or about May 22, 1946 Crules R. Cheek was duly appointed receiver of the partnership of Pacific Firm-Bilt and gave bond in the sum of \$10,000, which was duly approved on May 23, 1946, and said Crules R. Cheek entered on his duties as said receiver:

On or about June 3, 1946 Crules R. Cheek was duly appointed as trustee of the estates of defendants as individuals and gave bond in the sum of \$2,500.00 [2] as trustee of the estate of defendant Amelia E. Noell, which bond was duly approved on June 6, 1946, and bond in the sum of \$100 as trustee of the estate of defendant James A. Noell, which bond was duly approved on June 7, 1946, and said Crules R. Cheek entered upon the duties of his office of trustee of the individual estates of said bankrupts;

On June 3, 1946 Crules R. Cheek was appointed trustee of the partnership estate, and posted bond in the sum of \$5,000, which bond was duly approved on June 6, 1946, and said Crules R. Cheek entered upon the duties of his office of trustee of the estate of said partnership;

At all times herein mentioned after the appointment and qualification of said Crules R. Cheek as receiver and trustee as aforesaid, said receiver and trustee, Crules R. Cheek, was charged with the con-

trol and custody of all of the assets, money and property, belonging to the individual estates of said defendants and to the estate of the partnership composed of said defendants, and;

Commencing on or about May 23, 1946 and continuing thereafter until on or about the date of the return of this indictment, defendants James A. Noell and Amelia E. Noell, in Los Angeles County, within the Central Division of the Southern District of California, did knowingly and fraudulently conceal from Crules R. Cheek, receiver and trustee as aforesaid, a portion of the assets belonging to the individual estates of said defendants and the estate of the partnership composed of said defendants, namely \$25,000.00 in cash, and one 1941 Chevrolet Tudor Sedan.

Count Two

(11 U .S. C. 52 (b) (2))

The Grand Jury realleges all of the allegations of the first count of the indictment, except those contained in the last paragraph thereof.

On or about May 22, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant Amelia E. Noell did knowingly and fraudulently make a false oath in said bankruptcy proceeding; namely, in Schedule "F," which schedule was attached to and was a part of the voluntary petition in bankruptcy filed by defendants as aforesaid, [3] and purported to list all the property of Amelia E. Noell, and in which schedule appeared the following:

“Schedule F-2 (A. E. Noell) Personal Property

* * * *

G.—Automobiles and other Vehicles: None.

* * * *

Schedule F-4 (A. E. Noell)

Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

* * * *

Personal Property: None.”

and at the foot of which Schedule F appeared the following oath:

“I, Amelia E. Noell, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.”

which oath was signed and sworn to by defendant Amelia E. Noell on or about May 22, 1946, before Mabel Swift Doyle, a Notary Public in and for the County of Los Angeles and State of California and authorized to administer oaths;

Which aforesaid statements in Schedule F were false, as defendant Amelia E. Noell then and there well knew, in that defendant Amelia E. Noell had a property interest in a 1941 Chevrolet Tudor Sedan automobile. [4]

Count Three

1 (11 U. S. C. 52 (b) (2))

The Grand Jury realleges all of the allegations of the first count of the indictment, except those contained in the last paragraph thereof.

On or about June 3, 1946, in Los Angeles County, California, within the Central Division of the Southern District of California, defendant James A. Noell did knowingly and fraudulently make a false oath in said bankruptcy proceeding; namely, before Benno M. Brink, Referee in Bankruptcy, sitting in Los Angeles, California, on June 3, 1946, at which time defendant James A. Noell was duly sworn by Benno M. Brink, Referee in Bankruptcy, who then and there had competent authority to administer an oath to said defendant in said proceedings, to testify to the truth, the whole truth, and nothing but the truth in the proceedings then before said referee, and said defendant James A. Noell was thereupon examined and while under oath gave the following testimony:

(Transcript, June 3, 1946, p. 14, l. 22-p. 15, l. 9.)

“Q. [by Mr. Durst] What car did you drive the week before?

A. [by defendant James A. Noell] I drove a car that formerly was Mrs. Noell’s car.

Q. What kind of a car was that?

A. 1941 Chevrolet, two-door sedan.

Q. And was that car clear?

A. That car was sold to John Bucemi.

Q. Do you know whether it was clear?

A. Sir?

Q. Do you know whether it was clear or not?

A. It was clear when it was sold to John Bucemi, yes, sir, by Mrs. Noell. It was her car.

Q. And for how much was it sold?

A. Let's see, eight hundred and some odd dollars was the selling price, whatever it was. [5]

* * * *

(Transcript, June 3, 1946, p. 16, l. 6-10.)

“Q. Who has the pink slip on that Chevrolet automobile?

A. Mr. Bucemi is the owner.

Q. Pardon me; who has the pink slip?

A. I don't know, sir. I presume he should have it. He is the owner.

* * * *

(Transcript, June 3, 1946, p. 21, l. 24 - p. 22, l. 3.)

Q. [by Referee Brink] All right, when was the last time you had the Chevrolet in your possession, or when was the last time it was in Mrs. Noell's possession?

A. [by defendant James A. Noell] It was in my possession about a week ago. But it was Mr. Bucemi's car. I had borrowed it from him. The title had been transferred and everything so far as I know.”

Which testimony was false as the defendant James A. Noell then and there well knew in that his wife, defendant Amelia E. Noell, did have an interest in said 1941 Chevrolet Tudor Sedan auto-

mobile, and had not made a bona fide sale thereof to John Bucemi.

A true bill.

/s/ WALTER L. MOODY,
Foreman.

/s/ JAMES M. CARTER,
United States Attorney.

[Endorsed]: Filed Jan. 28, 1948. [6]

At a stated term, to wit: The February Term, A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 24th day of February in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable J. F. T. O'Connor, District Judge.

Title of Cause.]

For hearing on motions: E. J. Zack, Ass't. U. S. Att'y., appearing as counsel for Gov't.; A. B. Rose, Esq., appearing as counsel for defendants, who are present on bond; Attorney Rose makes a statement and moves to quash the Indictment and the Court denies the said motion and allows exception.

Attorney Zack makes a statement. No motions have been filed.

Defendants state their true names are as set forth in Indictment, waive reading of Indictment, and

each defendant pleads not guilty, to all three counts.

Court orders case transferred to Judge Beaumont for setting April 12, 1948. [7]

At a stated term, to wit: The February Term, A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 10th day of June in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Wm. C. Mathes, District Judge.

[Title of Cause.]

For further trial by jury: E. J. Zack, Ass't. U. S. Att'y., appearing as counsel for Gov't.; A. B. Rose, Esq., appearing as counsel for defendants, who are present; and jury and alternate juror being present, and counsel so stipulating, Court orders trial proceed.

Geo. M. Kirk, Jr., heretofore sworn, testifies further.

At 11:15 a. m. Court admonishes the jurors and declares a recess for five minutes. At 11:35 a. m. court reconvenes herein and all being present as before, including defendants and jurors, Witness Kirk testifies further.

At 12:10 p. m. court admonishes the jurors and declares a recess to 1:45 p. m. At 1:55 p. m. court reconvenes herein and all being present as before, including the jurors and defendants, Dennis Ear-

hart is called, sworn, and testifies. U. S. Ex. 100 is marked for ident.

Johnny Richardson is sworn and withdraws from witness stand.

Witness Earhart resumes the stand and testifies further.

Witness Richardson, heretofore sworn, resumes the stand and testifies. U. S. Ex. 101 for ident. is so marked. There is no cross-examination of Witness Richardson.

Theodore Petersen is called, sworn, and testifies for Gov't. and U. S. Ex. 102 is marked for ident.

Louise Todd Knapp is called, sworn, and testifies for Gov't., and U. S. 103 is marked for ident.

Anna Glasbrenner is called, sworn, and testifies for Gov't., and U. S. Ex. 104 is marked for ident.

U. S. Ex. 91, U. S. Ex. 6 and 7, and U. S. Ex. 40, 90, and 99 are received in evidence. Court admonishes the jurors and declares a recess for a few minutes. [8]

Court reconvenes herein and all being present as before, including defendants and jurors; Original of U. S. Ex. 88 for ident. is produced and pursuant to stipulation is deemed offered and received in evidence as U. S. Ex. 88-A in presence of jurors. Gov't. rests.

In the absence of the jury Attorney Rose moves separately for acquittal of defendant Amelia E.

Noell and Court denies said motion without prejudice.

At 4:05 p. m. jurors return into court and cause is re-opened. U. S. Ex. 88-A for ident. is received in evidence by stipulation. Gov't. rests.

Clarence Palm is called, sworn, and testifies for defendants.

At 4:30 p. m. Court admonishes the jurors and declares a recess in this trial to 9:30 a. m., June 11, 1948. [9]

At a stated term, to wit: The February Term, A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 16th day of June in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Wm. C. Mathes, District Judge.

[Title of Cause.]

For further trial; E. J. Zack, Ass't. U. S. Att'y., appear as counsel for Gov't.; A. B. Rose, Esq., appearing as counsel for defendants, who are both present; jury is absent; Jack Ambrose, Reporter, is present; court convenes herein at 9 a. m.; counsel agree that the jury may be instructed Friday morning.

At close of evidence, Attorney Rose moves for judgments of acquittal and his motion is denied. Attorney Rose discusses a proposed instruction.

Jury and alternate juror are brought into court and all being present as before, including defendants and counsel, Court orders jurors excused to 10:45 a. m. and admonishes the jurors and excuses them to said time.

In absence of jurors, counsel and the Court continue discussion of proposed instruction. At 10:50 a. m. jurors being absent, defendant and counsel present, counsel further present their views on the proposed instructions and certain changes are made. At 11:55 a. m. jury and alternate juror return into court and defendants and counsel being present, Court admonishes the jurors and declares a recess to 1:30 p. m.

At 1:45 p. m. court reconvenes herein and all being present as before, including defendants and counsel, jurors being absent, counsel discuss proposed instructions.

At 1:54 p. m. jurors return into court and further discussion ensues.

Attorney Zack argues to jury for Gov't. At 3 p. m. court admonishes the jury and declares a recess for five minutes. [10]

At 3:31 p. m. court reconvenes herein and all being present as before, including jurors, defendants, and counsel, Attorney Zack resumes his argument for Gov't. At 3:52 p. m. Attorney Zack concludes his argument. Attorney Rose argues for defendant to the jury at 3:53 p. m.

At 4:12 p. m. Court admonishes the jurors not to discuss this cause and declares a recess to June 17, 1948, 9:30 a. m., for further jury trial. [11]

At a stated term, to wit: The February Term, A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 18th day of June in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Wm. C. Mathes, District Judge.

[Title of Cause.]

For further jury trial; E. J. Zack, Ass't. U. S. Att'y., appearing as counsel for Gov't.; A. B. Rose, Esq., appearing as counsel for defendants, who are both present; and jury and alternate juror being absent;

Court and counsel discuss special interrogatories as to count 1 of the Indictment. Attorney Rose objects to proposed special interrogatories which are filed and objection is sustained.

At 9:40 a. m. the jury and alternate juror are brought into court, and defendants and counsel being present, Court instructs the jurors on the law of the case. At 10:15 a. m. Court admonishes the jurors and declares a recess for them, and they leave the court room. In the absence of the jurors, the Court inquires if there are any objections to the instructions and both sides reply they have none; it is stipulated that instruction 25 be given, the jury and alternate juror are returned into Court, and all being present as before, Court concludes instructing the jury.

Thos. R. Keefer, Mitchell Aronson, and E. R. MacManus are sworn as officers to take charge of the jury during its deliberation upon a verdict, and at 10:27 a. m. jurors retire to deliberate and court recesses.

Court resumes the bench, defendants and counsel present, Court excuses the alternate juror. At 11:52 a. m. the jury comes into court and defendants and counsel being present, jury presents verdicts, which are read, and each juror being polled states verdicts as rendered are his own true verdict, Court orders verdicts filed and entered in minutes, said verdicts being as follows: [12]

* * * *

Court orders cause as to both defendants referred to Prob. Officer for investigation and report and continued to July 12, 1948, 1:30 p. m., for hearing said reports and sentence of both defendants, and that defendants meantime continue on bail and return at said time. [13]

[Title of District Court and Cause.]

VERDICT

We, the jury in the above entitled cause, find the defendant James A. Noell Guilty as charged in the First count of the indictment; and Guilty as charged in the Third count of the indictment.

Los Angeles, California, June 18th, 1948.

/s/ EDWARD C. ATKINSON,

Foreman of the Jury.

[Endorsed]: Filed June 18, 1948. [14]

[Title of District Court and Cause.]

VERDICT

We, the jury in the above entitled cause, find the defendant Amelia E. Noell Guilty as charged in the First count of the indictment; and Guilty as charged in the Second count of the indictment.

Los Angeles, California, June 18th, 1948.

/s/ EDWARD C. ATKINSON,

Foreman of the Jury.

[Endorsed]: Filed June 18, 1948. [15]

[Title of District Court and Cause.]

SPECIAL INTERROGATORIES

We, the jury in the above entitled cause, unanimously find as follows:

Interrogatory: (1) Did the defendant James A. Noell knowingly and fraudulently conceal from Crules R. Cheek, first as receiver and later as trustee in bankruptcy, a sum of money belonging to the bankrupt estate, as charged in Count One of the indictment?

Finding of the Jury ("Yes") or ("No".)

Interrogatory: (2) Did the defendant James A. Noell knowingly and fraudulently conceal from Crules R. Cheek, first as receiver and later as trustee in bankruptcy, a 1941 Chevrolet Tudor Sedan

belonging to the bankrupt estate, as charged in Count One of the indictment?

Finding of the Jury ("Yes") or ("No".)

Los Angeles, California, June, 1948.

.....,

Foreman of the Jury.

[Endorsed]: Filed June 18, 1948. [16]

[Title of District Court and Cause.]

SPECIAL INTERROGATORIES

We, the jury in the above-entitled cause, unanimously find as follows:

Interrogatory: (1) Did the defendant Amelia E. Noell knowingly and fraudulently conceal from Crules R. Cheek, first as receiver and later as trustee in bankruptcy, a sum of money belonging to the bankrupt estate, as charged in Count One of the indictment?

Finding of the Jury ("Yes") or ("No".)

Interrogatory: (2) Did the defendant Amelia E. Noell knowingly and fraudulently conceal from Crules R. Cheek, first as receiver and later as trustee in bankruptcy, a 1941 Chevrolet Tudor Sedan belonging to the bankrupt estate, as charged in Count One of the indictment?

Finding of the Jury ("Yes") or ("No".)

Los Angeles, California, June, 1948.

.....,

Foreman of the Jury.

[Endorsed]: Filed June 18, 1948. [17]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

The defendant Amelia E. Noell, having heretofore in the above entitled cause presented a motion for Judgment of Acquittal at the close of the evidence offered by the Government, and having made a similar motion for Judgment of Acquittal at the close of all the evidence, said Amelia E. Noell, pursuant to Subdivision (b) of Rule 29 of the Rules of Criminal Procedure, respectfully moves this Court for a Judgment of Acquittal of the offenses charged in Count I of the Indictment herein, and presents this, her similar motion as to Count II of the Indictment herein; and pursuant to said Subdivision (b) of Rule 29, moves that in the event this motion is denied, she be granted a new trial, which said motion is being submitted separately.

/s/ A. BRIGHAM ROSE,
Attorney for Defendants.

(Acknowledgment of Service.)

[Endorsed]: Filed June 23, 1948. [18]

[Title of District Court and Cause.]

MOTION FOR JUDGMENT OF ACQUITTAL

The defendant James A. Noell, having heretofore in the above entitled cause presented a motion for Judgment of Acquittal at the close of the evidence offered by the Government, and having made a similar motion for Judgment of Acquittal at the

close of all the evidence, said James A. Noell, pursuant to Subdivision (b) of Rule 29 of the Rules of Criminal Procedure, respectfully moves this Court for a Judgment of Acquittal of the offenses charged in Count I of the Indictment herein, and presents this, his similar motion as to Count III of the Indictment herein; and pursuant to said Subdivision (b) of Rule 29, moves that in the event this motion is denied, he be granted a new trial, which said motion is being submitted separately.

/s/ A. BRIGHAM ROSE,
Attorney for Defendants.

(Acknowledgment of Service.)

[Endorsed]: Filed June 23, 1948. [20]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant James A Noell and moves the Court to grant him a new trial in the above styled cause, for the following reasons, to-wit:

1. Because the verdict is contra to the law and the evidence.

2. Because the evidence fails to establish that the parties named in the Bill of Indictment were guilty of the commission of the offenses charged in Counts 1, 2 and 3 of the Indictment.

3. Because the trial Court erred in admitting incompetent evidence tending to prejudice the accused, with respect to consideration by the jury.

of the specific charges contained in the Indictment.

4. Because the trial Court, by reason of his interrogation to witnesses on the stand, had injected an issue foreign to the offenses charged in the Indictment, namely: the issues of the violation of O. P. A. regulations and so-termed "black-market" proceedings.

5. Because the trial Court permitted the prosecution to embark on a course of cross-examination of the accused outside of the scope of the matters testified to by them on direct examination and on their examination in chief.

6. That the Court and the Government's counsel were guilty of prejudicial misconduct in permitting an inference to be raised in the above cause that it was incumbent upon the defendant to negative issues created by the prosecution, not through competent evidence, but through the expediency of suspicion and conjecture based on issues presented in the Indictment, but in respect to which no legal proof was offered.

Wherefore this defendant prays that the Court set aside the verdict of the jury and grant the defendant a new trial.

/s/ A. BRIGHAM ROSE,

Attorney for Defendant James A. Noell and Amelia E. Noell.

Approved:

/s/ JAMES A. NOELL.

Points and Authorities to Follow.

(Acknowledgment of Service.)

[Endorsed]: Filed June 23, 1948. [23]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant Amelia E. Noell and moves the Court to grant her a new trial in the above styled cause, for the following reasons, to-wit:

1. Because the verdict is contra to the law and the evidence.

2. Because the evidence fails to establish that the parties named in the Bill of Indictment were guilty of the commission of the offenses charged in Counts 1, 2 and 3 of the Indictment.

3. Because the trial Court erred in admitting incompetent evidence tending to prejudice the accused, with respect to consideration by the jury of the specific charges contained in the Indictment.

4. Because the trial Court, by reason of his interrogation to witnesses on the stand, had injected an issue foreign to the offenses charged in the Indictment, namely: the issues of the violation of O. P. A. regulations and so-termed "black-market" proceedings.

5. Because the trial Court permitted the prosecution to embark on a course of cross-examination of the accused outside of the scope of the matters testified to by her on direct examination and on her examination in chief.

6. That the Court and the Government's counsel were guilty of prejudicial misconduct in permitting an inference to be raised in the above cause that it was incumbent upon the defendant to negative

issues created by the prosecution, not through competent evidence, but through the expediency of suspicion and conjecture based on issues presented in the Indictment, but in respect to which no legal proof was offered.

Wherefore this defendant prays that the Court set aside the verdict of the jury and grant the defendant a new trial.

/s/ A. BRIGHAM ROSE,

Attorney for Defendant James A. Noell and Amelia E. Noell.

Points and Authorities to Follow.

(Acknowledgment of Service.)

[Endorsed]: Filed June 23, 1948. [27]

At a stated term, to wit: The February Term. A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of July in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable: Wm C. Mathes, District Judge.

[Title of Cause.]

For hearing (1) motion of defendants for judgment of acquittal, (2) motions for a new trial, and (3) Probation Reports and sentence; E. J. Zack, Ass't U. S. Att'y, appearing as counsel for Gov't;

A. B. Rose, Esq., appearing as counsel for defendants, who are present;

Attorney Rose presents motions; Court denies (1) motion of defendants for judgment of acquittal; and (2) for new trial;

Defendant Amelia Noell states she is not guilty; defendant James E. Noell makes a statement; Attorney Rose makes a statement for both defendants;

Attorney Zack recommends sentence of three year imprisonment for each defendant; Court pronounces judgment on each defendant as follows:

District Court of the United States for the
District of California, Central Division

No. 19811

United States of America vs. James A. Noell

Criminal Indictment [for violation of 11 U.S.C.
52(b) (1) and (2)]

JUDGMENT AND COMMITMENT AND PROBATIONARY ORDER

On this 12th day of July, 1948, came the attorney for the government and the defendant appeared in person and with his counsel, A. Brigham Rose, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and verdict of guilty of the offense of having on or about May 23, 1946, knowingly and fraudulently concealed from the receiver and trustee a portion of the assets belonging to the individual estates of the defendants and the estate of the partnership composed of the

defendants, both estates being in bankruptcy, of \$25,000 in cash and one 1941 Chevrolet Sedan; and having on June 3, 1946, before the Referee in Bankruptcy at Los Angeles, made a false oath in proceedings before him, as charged in Counts One and Three of the indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years in an institution to be selected by the Attorney General of the United States or his authorized representative for the offense charged in the First Count of the indictment;

It Is Further Adjudged that imposition of sentence for the offense charged in the Third Count of the indictment be and is hereby suspended and the defendant is placed on probation for the period of five years commencing upon his release from custody following execution of the sentence imposed under Count One of the indictment; and the conditions of probation are hereby fixed as follows: during the probationary period the defendant shall (1) pay to the United States of America a fine of \$5,000 at such times and in such installments as the Probation Officer of this Court shall direct; (2) obey all laws applicable to his conduct; and (3) comply with

all rules which the Probation Officer of this Court shall prescribe for the guidance of his personal conduct.

It Is Further Adjudged that the defendant's bail be exonerated.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ WM. C. MATHES,
United States District Judge.

Filed July 12, 1948.

EDMUND L. SMITH,
Clerk.

By /s/ LOUIS J. SOMERS,
Deputy Clerk. [29]

District Court of the United States for the Southern
District of California, Central Division

No. 19811

United States of America vs. Amelia E. Noell
Criminal Indictment [for violation of 11 U.S.C.
52(b) (1) and (2)]

JUDGMENT AND COMMITMENT AND
PROBATIONARY ORDER

On this 12th day of July, 1948, came the attorney for the government and the defendant appeared in person with her counsel, A. Brigham Rose, Esquire.

It Is Adjudged that the defendant has been convicted upon her plea of not guilty and verdict of guilty of the offenses of having on or about May 23, 1946, knowingly and fraudulently concealed from the receiver and trustee a portion of the assets belonging to the individual estates of the defendants and the estate of the partnership composed of the defendants, both estates being in bankruptcy, of \$25,000 in cash and one 1941 Chevrolet Sedan; and having on May 22, 1946, made a false oath in proceedings under the Bankruptcy Act, as charged in Counts One and Two of the indictment; and the court having asked the defendant whether she has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three years in an institution to be selected by the Attorney General of the United States or his authorized representative for the offense charged in the First Count of the indictment;

It Is Further Adjudged that imposition of sentence for the offense charged in the Second Count of the indictment be and is hereby suspended, and the defendant is placed on probation for the period of five years commencing upon her release from custody following execution of the sentence imposed

under Count One of the indictment; and the conditions of probation are hereby fixed as follows: during the probationary period the defendant shall (1) pay to the United States of America a fine of \$5,000 at such times and in such installments as the Probation Officer of this Court shall direct; (2) obey all laws applicable to her conduct; and (3) comply with all rules which the Probation Officer of this Court shall prescribe for the guidance of her personal conduct.

It Is Further Adjudged that execution of judgment and sentence imposed under Count One of the indictment be stayed until 2 p.m. on July 19, 1948.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ WM. C. MATHES,

United States District Judge.

Filed July 12, 1948.

EDMUND L. SMITH,
Clerk.

By /s/ LOUIS J. SOMERS,
Deputy Clerk.

[30]

[Title of District Court and Cause.]

NOTICE OF APPEAL

The above named defendants hereby file this, their Notice of Appeal, to the United States Circuit Court of Appeals for the Ninth Circuit.

Name and Address of Appellants: James A. Noell, 124 West Pomona Ave., Monrovia, Calif. Amelia E. Noell, 124 West Pomona Ave., Monrovia, Calif.

Appellants Attorney: A. Brigham Rose, 408 South Spring St., Los Angeles, California, Michigan 7455.

Offense Charged as Against James A. Noell; and Amelia E. Noell: Count 1: Concealing assets in bankruptcy;

Offense Charged as Against Amelia E. Noell: Count 2: False oath in bankruptcy.

Offense Charged as Against James E. Noell: Count 3: False oath in bankruptcy. [31]

Concise Statement of Judgment:

Both defendants and appellants were sentenced to imprisonment for a period of three years on count 1.

Amelia E. Noell on count 2 was placed on probation for a period of five years and ordered to pay a fine of \$5,000.00.

James A. Noell on count 3 was placed on probation for a period of five years and ordered to pay a fine of \$5,000.00.

Judgment on each defendant was entered on July 12, 1948.

Defendants and appellants are in custody of U. S. Marshal.

JAMES A. NOELL and
AMELIA E. NOELL,
Defendants and Appellants,

By /s/ A. BRIGHAM ROSE
Their attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed July 19, 1948.

— [32]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED UPON ON APPEAL

Come now James A. Noell and Amelia E. Noell, and having filed an Appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment of the Court herein made on July 12, 1948, and they respectfully designate the points upon which they intend to rely on the Appeal herein:

STATEMENT OF POINTS

1. The Court erred in denying the motion of the appellants for a judgment of acquittal.

(a) At the conclusion of the Government's case.

(b) At the conclusion of the whole case.

(c) After the rendition of the verdict by the jury.

2. That the Court erred in confirming the verdict of the jury.

3. That the Government's case was wholly predicated on the fallacious doctrine of presumption of continued possession. [34]

4. The Government's case is wholly lacking in evidence to establish or reflect possession of any assets at the time of the appointment of the referee or trustee.

5. The proofs are wholly lacking in the establishing of any property at the time of the filing of the petition in bankruptcy by the appellants herein.

6. There is no evidence that Amelia E. Noell had anything whatsoever to do with the transaction asserted to have been had in respect to the Chevrolet automobile between J. P. Buscemi and James A. Noell.

7. The verdict of the jury herein returned and approved by the Trial Court is erroneous in that the same is contrary to law and is not supported by the evidence presented in the proceedings.

8. That the statements made in the schedules by Amelia E. Noell in respect to any interest in the Chevrolet automobile, were clearly justified under the facts established by the evidence.

9. That the answers made by the defendant, James A. Noell in respect to the Chevrolet automobile were unqualifiedly true and correct and could not possibly constitute a false oath.

10. That the Court erred in refusing to strike the testimony of the witness Kirke, which was merely opinion evidence in view of his admission that he

was arbitrarily rejecting the matters set forth in the bankruptcy schedules in regard to the disbursement to Schules of Fifteen Thousand (\$15,000.00) Dollars.

11. That the Court erred in admitting into evidence the testimony of the Postmaster at Roseburg, Oregon, for the purposes for which it was tendered.

12. The Court erred in receiving into evidence an envelope addressed to Schules, and returned for the purposes for which it was tendered.

13. That the Court erred in its prejudicial observations [35] in respect to the black market transactions elicited during the testimony of the defendant, James E. Noell and Louis Stroh.

14. The Court erred in the manner in which the claim of James A. Noell of immunity was handled in the presence of the jury.

15. The Court erred in permitting the Government's attorney to cross-examine the defendants and appellants as to matters which they were not examined on in their examination in chief. The injury was designed for the manifest purpose of presenting fallacious inferences to the jury.

16. The Court erred in permitting the enlarged charts of an asserted analysis made by the witness Kirke to be displayed to the jury in view of the manner in which said charts were set up and the characterizations therein reflected designed to emphasize the views of the expert witness Kirke, as distinguished from any factual matters in evidence.

17. That the evidence presented by the Govern-

ment as a whole failed to merely establish that certain moneys had come into the possession of defendant at a time prior to the appointment of the receiver and trustee in bankruptcy, and that the Government's case entirely rests on the contention that said form of possession created a presumption that said moneys were in possession of the defendants at the time of bankruptcy.

The above in general constitute the points to be relied on on appeal.

/s/ A. BRIGHAM ROSE

Attorney for Defendants and Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 3, 1948.

[36]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Now comes James A. Noell and Amelia E. Noell, appellants herein, having filed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit herein, and herewith designate the portion of the records of proceedings and evidence to be contained in the record on appeal herein, said designation herein referred to being as follows, to-wit:

1. The indictment returned herein.
2. The minutes reflecting the arraignment and the plea of the defendants.

3. The opening statement of Government's counsel.

4. Phonographic reporter's transcript of the evidence received at the time of trial, deleting therefrom, however, the extensive comments made by the Clerk in respect to the identification of the various exhibits.

5. The written motion for judgment of acquittal. [38]

6. The minutes reflecting the making of the aforesaid motion at the close of the Government's case.

7. The minutes reflecting the making of the aforesaid motion at the close of the whole case.

8. The minutes reflecting the motion renewed and filed five (5) days after the jury was discharged.

9. The motion for new trial.

10. The minutes reflecting the ruling of the Trial Court on each of the said motions.

11. The verdict of the jury.

12. The judgment and sentence.

13. The notice of appeal to the Ninth Circuit.

14. Designation of points on appeal.

15. Designation of contents of the record of appeal.

Appellants further designate and request that the portions of the foregoing documents referred to, containing and setting forth the title of the Court and the cause be omitted from said papers, save and excepting the title in the indictment. Appellants further submit that they intend to apply for leave

to have the original exhibits transmitted and apply for leave to file four (4) official copies of the reporter's transcript in lieu of a printed record.

/s/ A. BRIGHAM ROSE

Attorney for Defendants and Appellants.

(Acknowledgment of Service.)

[Endorsed:] Filed Aug. 3, 1948.

[39]

[Title of District Court and Cause.]

**ORDER EXTENDING TIME FOR DOCKET-
ING RECORD ON APPEAL**

Upon application of A. Brigham Rose, attorney of record for the above named defendants and appellants, for an order enlarging the time, pursuant to Rule 73, Subdivision G of the Federal Court Rules, in which to docket the record on appeal with the Circuit Court, now on motion by said attorney for the defendants and appellants, and upon consent of the Government, as per the Stipulation hereto annexed,

It Is Hereby Ordered that defendants and appellants above named may have up to and including the 18th day of October, 1948 within which to docket the appeal in the Ninth Circuit Court of Appeals, as provided in Subdivision G of Rule 73 of the Federal Court Rules.

Dated: This 26th day of August, 1948.

/s/ WM. C. MATHES

United States District Judge [41]

[Endorsed]: Filed Aug. 26, 1948.

[Title of District Court and Cause.]

STIPULATION FOR ENLARGEMENT OF
TIME TO DOCKET RECORD ON
APPEAL

Whereas, counsel for the respective parties in the above entitled proceeding are currently endeavoring to reach an agreement by stipulation as to the record acceptable to both parties on appeal in this cause; and

Whereas, the various official court reporters who reported parts of the proceedings have been engaged in recording proceedings in other causes, and it is mutually agreed that an extension of time will be required beyond the time provided for by the Federal Court Rules for the docketing of the record on appeal with the Circuit Court;

It Is Stipulated that an order may be made and entered herein, as provided by Subdivision G of Rule 73 of the Federal Court Rules, enlarging the time for the docketing of the record on appeal to the period of ninety (90) days, as provided by said Subdivision G of Rule 73 of the Federal Court Rules. [42]

Notice of Appeal herein was filed on the 19th day of July, 1948.

JAMES M. CARTER,

United States Attorney,

By: /s/ NORMAN W. NEUKOM

Attorney for Plaintiff and Appellee

/s/ A. BRIGHAM ROSE,

Attorney for Defendants and Appellants.

[Endorsed]: Filed Aug. 26, 1948.

[Title of District Court and Cause.]

COUNTER-DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

Comes now the appellee, United States of America, by Ernest J. Zack, Assistant United States Attorney, and in connection with the designation filed by appellants James A. Noell and Amelia E. Noell, in the District Court in the above-entitled cause on August 3, 1948, counter-designates the following additional portions of the record, proceedings, and evidence to be contained in the Record on Appeal:

1. Complete reporter's transcript of the evidence and proceedings at the trial, including the argument of counsel.
2. All exhibits introduced in evidence.
3. The instructions given by the trial court.
4. The alternative form of verdict proposed by the Court.

JAMES M. CARTER,
United States Attorney

NORMAN W. NEUKOM and
ERNEST J. ZACK

Assistant U. S. Attorneys

By /s/ ERNEST J. ZACK

Attorneys for Plaintiff and Appellee

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 13, 1948.

[Title of District Court and Cause.]

AFFIDAVIT

State of California,
County of Los Angeles—ss.

A. Brigham Rose, being duly sworn, deposes and says:

That he is the attorney for the defendants and appellants in the above entitled proceeding.

Following the conclusion of the trial of the above entitled action, several of the Official Court Reporters who had recorded the proceedings had at the time of trial in this action were engaged for a substantial period of time in recording the proceedings in the case of U. S. -vs- Kawakita, in which a daily transcript was involved; that affiant has deposited on account of the costs of preparing a reporter's transcript the sum of \$2500.00, in behalf of the defendants, and that this transcript is currently in the process of being prepared for use on appeal in behalf of the defendants and appellants. Affiant is informed that this record will not be available [46] until sometime in November, 1948, and that under the Order of Court for enlarging the time heretofore made for the docketing of the record on appeal, the time will expire October 19, 1948. Affiant submits that for said reason an additional Order should be made enlarging the time for the docketing of the record on appeal until November 30, 1948,

and submits herewith an Order extending the time in accordance with the matters herein set forth, to which the Government consents.

/s/ A. BRIGHAM ROSE

Subscribed and sworn to before me this 19th day of October, 1948.

(Seal) /s/ MAUD RICHARDSON

Notary Public in and for the County of Los Angeles, State of California.

Consent to Order Enlarging Time for Docketing
Record on Appeal

The undersigned consent to the proposed Order hereunto annexed.

JAMES M. CARTER,
United States Attorney

By: /s/ ERNEST J. ZACK
Attorney for Plaintiff and Appellee

/s/ A. BRIGHAM ROSE
Attorney for Defendants and Appellants.

[Endorsed]: Filed Oct. 22, 1948.

[47]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR DOCKET-
ING RECORD ON APPEAL

Upon application of A. Brigham Rose, attorney of record for the above named defendants and appellants for an Order enlarging the time in which to docket the record on appeal with the Circuit

Court, now on motion of said attorney for the defendants and appellants, and upon consent of the Government, as per Stipulation hereto annexed, It Is Hereby Ordered that the defendants and appellants above named may have up to and including the 30th day of November, 1948 within which to docket the appeal with the Ninth Circuit Court of Appeals, as provided by the Federal Court Rules.

Dated: This 19th day of October, 1948.

/s/ WM. C. MATHES

United States District Judge.

[Endorsed]: Filed Oct. 22, 1948.

[48]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between counsel for the parties to the above entitled action,

That an order may be made that the original exhibits received in evidence during the trial of said cause be transmitted to the United States Court of Appeals for the 9th Circuit, as part of the record on appeal in the within action.

Dated: November 24, 1948.

JAMES M. CARTER,

U. S. Attorney

By /s/ NORMAN W. NEUKOM

Deputy

Attorney for Plaintiff & Appellee

/s/ A. BRIGHAM ROSE

Attorney for Defendants and Appellants.

[Endorsed]: Filed Nov. 24, 1948.

[Title of District Court and Cause.]

ORDER

On reading and filing the annexed stipulation by and between counsel for the parties to the above entitled cause,

It Is Hereby Ordered that the original exhibits offered, or received, in evidence during the trial of the above captioned proceeding be transmitted to the United States Court of Appeals for the 9th Circuit, in lieu of copies thereof.

Dated: November 24, 1948.

/s/ WM. C. MATHES

Judge of the District Court of the United States.

[Endorsed]: Filed Nov. 24, 1948.

————— [50]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 50, inclusive, contain full, true and correct copies of Indictment; Minute Orders entered February 24, 1948, June 10, 16 and 18, 1948; Verdict as to each of the defendants; Form of Special Interrogatories as to each of the defendants; Motion for Judgment of Acquittal as to each of the defendants; Motion for New Trial as to each of the defendants; Minute Order

Entered July 12, 1948; Judgment, Commitment and A Probation Order as to each of the defendants; Notice of Appeal; Statement of Points to be Relied Upon on Appeal; Designation of Contents of Record on Appeal; Counter-Designation of Contents of Record on Appeal; Two Orders Extending Time to File Record on Appeal and Stipulation and Order for Transmission of Original Exhibits which, together with copy of reporter's transcript of proceedings on May 25, 26, 27 and 28, June 2, 3, 4, 8, 9, 10, 11, 15 and 18 and July 12, 1948 and original United States exhibits 1, 2, 3, 4, 4-a to 4-j, 5 to 24, 25a, 25b, 26 to 37, 38-a to 38-c, 39 to 48, 49, 49-a, 50 to 53, 53-a to 53-m, 54, 54a to 54-p, 55, 55a, 55b, 56, 56-a to 56-g, 57 to 70, 70-a, 70-b, 71 to 92, 92-a, 93 to 104 and Defendants' Original exhibits A to G, transmitted herewith, constitute the record on appeals to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$13.25 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 29 day of November, A.D. 1948.

(Seal)

EDMUND L. SMITH,
Clerk

[Endorsed]: No. 11989. United States Court of Appeals for the Ninth Circuit. James A. Noell and Amelia E. Noell, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed November 30, 1948.

/s/ PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 11989

JAMES A. NOELL and AMELIA E. NOELL,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY
ON APPEAL

1. The Court erred in denying the motion of the appellants for a judgment of acquittal.

(a) At the conclusion of the Government's case.

(b) At the conclusion of the whole case.

(c) After the rendition of the verdict by the jury.

2. That the Court erred in confirming the verdict of the jury.

3. That the Government's case was wholly predicated on the fallacious doctrine of presumption of continued possession.

4. The Government's case is wholly lacking in any evidence to establish or reflect possession of any assets at the time of the appointment of the referee or trustee.

5. The proofs are wholly lacking in the establishing of any property at the time of the filing of the petition in bankruptcy by the appellants herein.

6. There is no evidence that Amelia A. Noell had anything whatsoever to do with the transaction asserted to have been had in respect to the Chevrolet automobile between J. P. Buscemi and James A. Noell.

7. The verdict of the jury herein returned and approved by the Trial Court is erroneous in that the same is contrary to law and is not supported by the evidence presented in the proceedings.

8. That the statements made in the schedules by Amelia E. Noell in respect to any interest in the Chevrolet automobile, were clearly justified under the facts established by the evidence.

9. That the answers made by the defendant, James A. Noell in respect to the Chevrolet automobile were unqualifiedly true and correct and could not possibly constitute a false oath.

10. That the Court erred in refusing to strike the testimony of the witness Kirke, which was merely opinion evidence in view of his admission that he was arbitrarily rejecting the matters set forth in the bankruptcy schedules in regard to the disbursement to Schules of Fifteen Thousand (\$15,000.00) Dollars.

11. That the Court erred in admitting into evidence the testimony of the Postmaster at Roseburg, Oregon, for the purposes for which it was tendered.

12. The Court erred in receiving into evidence an envelope addressed to Schules, at Roseburg, Oregon.

13. That the Court erred in its prejudicial observations in respect to the black market transactions elicited during the testimony of the defendant, James E. Noell and Louis Stroh.

14. The Court erred in the manner in which the claim of James A. Noell of his rights to not incriminate himself was handled in the presence of the jury.

15. The Court erred in permitting the Government's attorney to cross-examine the defendants and appellants as to matters which they were not examined on in their examination in chief. The inquiry was designed for the manifest purpose of presenting fallacious inferences to the jury.

15. The Court erred in permitting the enlarged charts of an asserted analysis made by the witness, Kirke, to be displayed to the jury in view of the

manner in which said charts were set up and the characterizations therein reflected designed to emphasize the view of the expert witness Kirke, as distinguished from any factual matters in evidence.

17. That the evidence presented by the Government as a whole tended to merely establish that certain moneys had come into the possession of defendants at a time prior to the appointment of the receiver and trustee in bankruptcy, and that the Government's case entirely rests on the contention that said former possession created a presumption that said moneys were in possession of the defendants at the time of bankruptcy.

18. The Government's counsel was guilty of misconduct in his cross-examination of the defendants and appellants in regard to the person named Schules, the manner of examination manifestly being intended to cast doubt upon the transaction with the said Schules which was privileged.

19. The Court erred in receiving into evidence the multitudinous exhibits offered by the Government, which were at no time shown, exhibited or in any wise presented to the jury, i. e. in the Trial Court. No exhibits were ever shown or exhibited by the jury at any stage of the trial.

20. The Indictment was procured contrary to law in that it is manifest that the record of bankruptcy proceedings before the Referee were presented to the grand jury and the record further discloses that appellants counsel moved to quash the Indictment upon that ground.

DESIGNATION OF RECORD

The appellants above-named hereby designate that the record to be relied on upon appeal herein be the typewritten record of the official court reporters who recorded the proceedings at the time of trial. The Exhibits received and offered in evidence:

1. The clerk's transcript of the Indictment;
2. The minutes of the proceedings had;
3. All matters therein contained.

Respectfully submitted

/s/ A. BRIGHAM ROSE

Attorney for Appellants.

(Acknowledgment of Service.)

[Endorsed]: Filed February 17, 1949. Paul P. O'Brien, Clerk.

